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Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

O.S.C. Company,
Petitioner

v.

Edward G. Zymblosky, Jr., et al.,
Respondents

On Petition For Writ Of Certiorari
To The Pennsylvania Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether state court denies a party equal protection of law when it withholds the application of established case law and particularly uses an internal operating procedure to apply the law differently to the Petitioner than any other person and to limit the import and effect of an unpublished decision solely to the Petitioner.

II. Whether the state courts of Pennsylvania may strike deeds to property and order reconveyance without providing due process of law.

PARTIES TO THE PROCEEDING

Petitioner is the O.S.C. Company, a partnership which owns property formerly used by a now defunct railroad, including land upon which Respondents situated a portion of their junk yard.

Respondents are Edward G. Zymbloski, Jr., Gail Zymbloski, and Edward G. Zymbloski, Jr., t/a Boots & Hanks 24-Hour Towing and Wrecking Service, the proprietors of a junk yard that used and continue to use Petitioners' land as part of their junk yard.

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II. Whether the state courts of Pennsylvania may take property from a party without due process.

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Petitioner respectfully seek a writ of certiorari to the Pennsylvania Supreme Court.

OPINION AND JUDGMENT BELOW

The order of the Pennsylvania Supreme Court denying Petitioner's Petition for Allowance of Appeal is unreported and is reprinted in the Appendix to this Petition as Appendix A. The decision of the Pennsylvania Superior Court which denied Petitioners appeal is unreported and is reprinted in the Appendix to this Petition as Appendix B. The decision of the Lackawanna

County Court of Common Pleas, which initially violated Petitioner's right to due process and equal protection is unreported and is reprinted in the Appendix to this Petition as Appendix C.

STATEMENT OF JURISDICTION

The Pennsylvania Supreme Court denied Petitioner's Petition for Allowance of Appeal on April 26, 2005. This Court has jurisdiction under 28 U.S.C. § 1257.

FEDERAL STATUTORY PROVISIONS INVOLVED

The Equal Protection Clause of the 14th amendment to the U.S. Constitution prohibits state governments from denying any person within its jurisdiction the equal protection of the laws. The 14th Amendment states:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV.

The Due Process Clause of the 14th Amendment provides "nor shall any State deprive any person of life, liberty, or property, without due process of law . . .". U.S. Const. Amend. XIV.

INTRODUCTION

The Fourteenth Amendment to the United States Constitution provides that state governments and their judicial systems afford due process of law and equal protection of the laws to its citizens. In this case, the Pennsylvania Courts deprived Petitioner of its property by ordering Petitioner to transfer title to its property to the Respondents without a trial by jury, a full hearing or opportunity for any hearing, and withheld the application of established case law. In rendering its unreported decision, the state appellate court made use of No. 37 of its Internal Operating Procedures (210 Pa. Code. Section 65.37), which allowed that court to apply the law differently to the Petitioner than as to any other similarly situated person and to limit the import and effect of its decision solely to the Petitioner.[1]

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1 Section 37 of the Internal Operating Procedures of the Superior Court of Pennsylvania which governs the Superior Court's practice and procedure reads as follows: § 65.37. Unpublished Memoranda Decisions

A. An unpublished memorandum decision shall not be relied upon or cited by a Court or a party in any other action or proceeding, except that such a memorandum decision may be relied upon or cited (1) when it is relevant under the doctrine of law of the case, res judicata, or collateral estoppel, and (2) when the memorandum is relevant to a criminal action or proceeding because it recites issues raised and reasons for a decision affecting the same defendant in a prior action or proceeding. When an unpublished memorandum is relied upon pursuant to this rule, a copy of the memorandum must be furnished to the other party to the Court.

B. After an unpublished memorandum decision has been filed, the panel may sua sponte, or on the motion of any party to the appeal, or on request by the trial judge, convert the memorandum to a published opinion. In the case of a motion of any party to the appeal or a request from the trial judge, such motion or request must be filed with the Prothonotary within 14 days after the entry of

STATEMENT OF THE CASE

The instant Petition for Writ of Certiorari emanates from the Lackawanna County Court of Common Pleas issued in 97-CIV-3990. This order circumvented established case law and struck the deeds which Petitioner acquired at sheriff's sale to land which was formerly owned by Respondents all without a trial by jury, full hearing or an opportunity for a hearing. The Petitioners timely appealed the June 20, 2003 Order to the Pennsylvania Superior Court. The appeal was docketed to 1021 MDA 2003. On May 25, 2004, the Superior Court issued its non-precedential decision (unpublished memorandum) which adopted the lower state court decision as its own and affirmed the June 20, 2003 Order. "[w]e conclude that the trial court's thorough and thoughtful decision correctly disposes of Appellant's issues on appeal." Id.

In civil action 97-CIV-3990 (Lacka. Cty.) the Petitioner sued Respondents for trespass and damages caused by Respondents unpermitted use of Petitioner's land as part of the Respondents' junk yard operation. After years of Respondents ignoring Petitioner's written demands to cease the continuing trespass, Petitioner filed a trespass action. During the course of the at law action, Respondents admitted trespassing on the Petitioner's land for at least a period of 13 years. On December 22, 2000, the lower court awarded Petitioner damages of $6,500.00 per year for each year of Respondents' trespass upon the Petitioner's land. Respondents filed exceptions to the lower court's December 22, 2000 decision which were denied by the

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judgment or other order involved. The decision to publish is solely within the discretion of the panel.

lower court by Order dated January 11, 2001. This Order was entered on the record a judgment in Petitioner's favor for trespass and against the Respondents and awarded Petitioner damages in the amount of $6,500.00 per year or $541.66 per month. The entered judgment Order states in pertinent part:

> "2. Judgment entered in favor of Plaintiff and against the Defendant with regard to Defendant's trespass upon Plaintiff's right of way without any authorization of the Plaintiff; and
>
> 3. Judgment is entered in favor of the Plaintiff and against the Defendants for fair rental damages of $6,500.00 per year, or $541.66 per month."

(Lower court's decision of January 11, 2001, See Appendix C).

On January 12, 2001, Petitioner filed a post-trial motion with the lower court to confirm the January 11, 2001 Order. The lower court failed to act on the post-trial motion within thirty days[2]. Petitioner then calculated the trespass damages awarded by the lower court by multiplying the number of years that the court found that Respondents had trespassed by the amount of money that the lower court determined to be fair monthly damages plus legal interest. Eight months later, on August 3, 2001, Petitioner filed with the lower court, a praecipe for writ of execution in the amount of $184,349.26 and an affidavit pursuant to Pa.R.C.P. Rule 3129. The amount set forth in the Praecipe for Writ of

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2 It was not until January 8, 2002, that the lower court finally acted on Petitioner's motion for post trial relief, 361 days after Petitioner had filed its post-trial motion on January 12, 2001 and also after the Superior Court dismissed Respondents' appeal on June 11, 2001. The lower court's decisions of December 22, 2000 and January 11, 2001 became final on June 11, 2001.